

APPEAL NO. 032553
FILED NOVEMBER 17, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 28, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the seventh quarter. The claimant appealed, asserting that the hearing officer's determination is against the great weight of the evidence. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that claimant had an impairment rating of 15% from the compensable injury, and that the qualifying period for the seventh quarter was from January 5 through April 5, 2003. At issue is the requirement of a good faith effort to obtain employment commensurate with the employee's ability to work pursuant to Section 408.142(a)(4) and Rule 130.102(d)(5) and (e).

Rule 130.102(d)(5) provides, in pertinent part, that an injured employee has made the required good faith effort if the employee "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Subsection (e) further provides that the injured worker "who is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." The hearing officer noted that the Application for [SIBs] (TWCC-52) documents at least two job searches for each week of the qualifying period, but the hearing officer found that the claimant "did not have a valid job search plan, spent no more than two hours per week seeking employment, was not registered with Texas Workforce Commission, did not use a resumé, did not use newspaper want ads or a private employment placement company, and contacted only two businesses each week for eleven of the thirteen weeks of the qualifying period."

Whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve from the evidence presented. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge